

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY J. BUZZITTA and U.S. POSTAL SERVICE,
UNIVERSITY CITY STATION, St. Louis, MO

*Docket No. 02-1069; Submitted on the Record;
Issued November 7, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has more than a 15 percent impairment of the left upper extremity and a 13 percent impairment of the right upper extremity, for which he received schedule awards.

On May 18, 2000 appellant, then a 53-year-old letter carrier, filed an occupational disease claim, alleging that factors of employment caused rotator cuff damage to the right shoulder and impingement of the left shoulder. The Office of Workers' Compensation Programs accepted that appellant sustained employment-related aggravation of impingement and tendinitis of the right shoulder, for which he had surgery and impingement of the left shoulder. He did not work for the period April 3 to July 8, 2000, when he returned to limited duty as a modified clerk. On January 25, 2001 appellant filed a schedule award claim. By decision dated May 2, 2001, the Office determined that appellant's modified clerk position fairly and reasonably represented his wage-earning capacity and that, as his wages met or exceeded the wages of the job held when injured, he had no loss of wage-earning capacity.¹ By letter dated February 14, 2001, the Office requested that his treating Board-certified orthopedic surgeon, Dr. Gary A. Miller, evaluate appellant's impairment of both shoulders and provided a chart for range of motion measurements. Dr. Miller provided a report dated April 24, 2001 and in reports dated May 7 and 21, 2001, an Office medical adviser reviewed his findings.

In a decision dated November 7, 2001, appellant was granted a schedule award for a 15 percent permanent loss of use of the left arm, for a total of 46.80 weeks of compensation, to run from July 8, 2000 to May 31, 2001. On November 8, 2001 he was granted a schedule award for a 13 percent permanent loss of use of the right arm, for a total of 40.56 weeks of compensation, to run from June 1, 2001 to March 11, 2002.² The instant appeal follows.

¹ Appellant has not filed an appeal with the Board regarding this decision. On May 31, 2001 he requested a hearing before the Branch of Hearings and Review of the Office. The hearing was scheduled for October 30, 2001, and on that day, the hearing was cancelled and he withdrew his request for a hearing.

² This decision was initially issued on November 7, 2001 but contained a typographical error indicating that the award was for the left arm.

The Board finds that appellant has no more than a 15 percent impairment of the left upper extremity and a 13 percent impairment of the right upper extremity, for which he received schedule awards.

The schedule award provisions of the Federal Employees' Compensation Act³ and its implementing regulation⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁵

The relevant medical evidence includes a report dated April 24, 2001 in which Dr. Miller, appellant's treating Board-certified orthopedic surgeon, advised that appellant reached maximum medical improvement on April 3, 2000. He provided range of motion measurements for appellant's shoulders⁶ and recommended impairments of 40 percent on the right and 10 percent on the left. An Office medical adviser then utilized the measurements provided by Dr. Miller and applied the relevant figures of the A.M.A., *Guides*, finding that on the right, under Figure 16-46, appellant had a two percent impairment for internal rotation and no impairment for external rotation;⁷ under Figure 16-40, six percent impairment; for flexion and no impairment for extension;⁸ and under Figure 16-43, three percent impairment for abduction and no impairment for adduction.⁹ The Office medical adviser found that on the left, under Figure 16-46 appellant had a two percent impairment for internal rotation and no impairment for external rotation;¹⁰ under Figure 16-40, six percent impairment for flexion and a one percent impairment for extension;¹¹ and under Figure 16-43, four percent impairment for abduction and no impairment for adduction.¹² The Office medical adviser advised that appellant was entitled to a further two percent impairment bilaterally under the A.M.A., *Guides*,¹³ for pain in the suprascapular nerve

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

⁵ *Id.*

⁶ Dr. Miller advised that appellant had retained internal rotation of 50 degrees bilaterally, retained external rotation of 70 degrees on the right and 65 degrees on the left, retained flexion of 90 degrees bilaterally, retained extension of 60 degrees on the right and 40 degrees on the left, retained abduction of 120 degrees on the right and 100 degrees on the left and retained adduction of 60 degrees on the right and 70 degrees on the left.

⁷ A.M.A., *Guides*, *supra* note 5 at 479.

⁸ *Id.* at 476.

⁹ *Id.* at 477.

¹⁰ *Id.* at 479.

¹¹ *Id.* at 476.

¹² *Id.* at 477.

¹³ *Id.* at 484, 492.

distribution. The Office medical adviser then followed the instructions found in the A.M.A., *Guides*¹⁴ and added the respective range of motion impairments and combined the total range of motion deficits for both upper extremities with the 2 percent sensory deficit, concluding that appellant had permanent impairments of 13 percent on the right and 15 percent on the left respectively.

The Board finds that Dr. Miller's report did not comport with the instructions found in the A.M.A., *Guides*. The Office medical adviser thus applied the relevant standards of the A.M.A., *Guides* to Dr. Miller's findings in order to determine that appellant had 13 and 15 percent impairments of the right and left upper extremities respectively. It is appellant's burden to submit sufficient evidence to establish his claim.¹⁵ While Dr. Miller indicated that appellant had a 40 percent right upper extremity impairment and a 10 percent left upper extremity impairment, he did not indicate what tables and/or figures he utilized to reach this conclusion. There is, therefore, no medical evidence establishing that appellant has greater than a 13 percent impairment on the right and a 15 percent impairment on the left, for which he received schedule awards.¹⁶

The decisions of the Office of Workers' Compensation Programs dated November 7 and 8, 2001 are hereby affirmed.

Dated, Washington, DC
November 7, 2002

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁴ *Id.* at 479, 487.

¹⁵ See *Annette M. Dent*, 44 ECAB 403 (1993).

¹⁶ The Board notes that appellant submitted medical evidence with his appeal to the Board. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence of record which was before the Office at the times of its final decision. 20 C.F.R. § 501.2(c). The Board further notes that a claimant may seek an increased schedule award if the evidence establishes that progression of an employment-related condition, without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated. *Linda T. Brown*, 51 ECAB 115 (1999).